IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7505 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S. ACCRAPAC (INDIA) PVT LTD & ANR.

Versus

SUPERINTENDENT, PROHIBITION & EXCISE DEPT. & ANR.

Appearance:

1. Special Civil Application No. 7505 of 2001

MR MIHIR H JOSHI for Petitioners No. 1-2

NOTICE SERVED for Respondent No. 1

MS NANDINI JOSHI AGP for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/12/2001

ORAL JUDGEMENT

1. Rule. Ms. Nandini Joshi, learned AGP, appears and waives service of Rule on behalf of respondent-State.

2. Mr. Mihir Joshi, learned Advocate appearing for the petitioner, does not press prayer clause (A) of paragraph 20 without prejudice to his rights and contentions to press this prayer at the appropriate stage.

3. Mr. Joshi submitted that the order dated 22nd November, 2000 is passed, whereby the appeal filed by the petitioner against the order dated 13th July, 2000 is not entertained on the ground that the said appeal was filed beyond the time prescribed for filing an appeal. Mr. Joshi submitted that the order dated 13th July, 2000 was received by the petitioner on 12th August, 2000 and he filed the appeal dated 1st November, 2000, which was received by the Government on 9th November, 2000. The said appeal is not entertained by relying upon Rule 127 of the Medicinal and Toilet Preparations (Excise) Duties Rules, 1956. Rule 127 provides for appeals. Sub. rule (ii) reads as under :

> "Every appeal under this rule should be filed within 3 months of the date of the decision or order appealed against an order passed in appeal under this rule shall, subject to the power of revision conferred by rule 129, be final."

4. Mr. Joshi, learned advocate for the petitioner, submitted that in similar circumstances wherein the rule provided for preferring appeal from the date of the order, the Apex Court has held in the case of Housing Board, Haryana vs. Housing Board Colony Welfare Association and others, reported in 1995 (5)SCC 672, in paragraph 8 as under :

> "8. Before considering the merits of the submissions made by the learned counsel for the appellant, it would be appropriate first to look into the relevant provisions relating to the limitation. Section 15 of the Act makes a provision for appeal and prescribes the limitation for the same. It reads as under :
>
> "15. Appeal.- Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of an order, in such form and manner as may be prescribed:
>
> Provided further that the State Commission may

entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.""

The relevant portion of paragraph 12 of the said judgement reads as under :

12. In the facts and circumstances stated above, the date of pronouncement of the order in the open court by itself cannot be the starting point for determining the period of limitation under Section 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by the members of the District Forum constituting the Bench and the same was communicated to the parties free of charge. That being so, it has to be appreciated that mere pronouncement of an order in the open court will not be enough but under the scheme of the Rules a copy of the said order has also to be communicated to the parties affected by the said order so that the party adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or higher forums. In the absence of such communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same and get it set aside by the appellate authority or the higher forums."

5. Mr. Joshi submitted that rule 127 providing for filing of an appeal within 3 months from the date of decision or order is unworkable in absence of a copy of the order being available to the aggrieved party. Mr. Joshi also submitted that rule 129 provides for filing of a certified copy along with the appeal memo. This is possible only when a copy is available and, therefore, providing for filing an appeal from the date of order and not giving any significance to the date of receipt of the copy of that order is not proper.

6. The learned AGP, Ms. Nandini Joshi, submitted that there is a remedy of filing a revision available to the petitioner.

7. Looking to the peculiar facts and circumstances of the case and looking to the nature of the dispute

involved in the matter, it is deemed fit that the petitioner be not relegated to the alternative remedy of revision. In view of the aforesaid clear judgement of the Apex Court on the issue and taking into consideration the substance of the submissions made by Mr. Joshi, learned Advocate for the petitioner, the order dated 22nd November, 2000 is hereby quashed and set aside and the authorities are directed to entertain the appeal of the petitioner on merits. The petition is partly allowed. Rule is made absolute to the aforesaid extent only. No order as to costs. It goes without saying that the interim relief granted earlier against coercive recovery shall continue till the stay application filed along with the appeal by the petitioner is decided by the appellate authority.

(Ravi R. Tripathi, J.)

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